

Sushil Kumar Mahato Vs. Ranchi Regional Development Authority and ors.

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Court : Jharkhand

Decided On : Sep-30-2003

Reported in : [2004(1)JCR182(Jhr)]

Judge : P.K. Balasubramanyan, C.J. and; R.K. Merathia, J.

Acts : Building Law; [Constitution of India](#) - Article - 226; Ranchi Regional Development Authority Act

Appeal No. : WP (PIL) No. 1590 of 2002

Appellant : Sushil Kumar Mahato

Respondent : Ranchi Regional Development Authority and ors.

Advocate for Def. : A.K. Singh,; B.K. Dubey,; V. Shivnath,;

Advocate for Pet/Ap. : M.S. Anwar,; N. Hoda,; Ruby Praveen and;

Disposition : Application allowed

Judgement :

P.K. Balasubramanyan, C.J.

1. This writ petition is filed by a resident of Basant Bihar, Harmu Housing Colony, Ranchi. He claims to be the president of the Basant Bihar Vikas Samiti formed by the residents of the colony and claims that the writ petition is filed in a

representative capacity. What he seeks to espouse is the cause of a planned developed of the colony strictly in accordance with the Regional Development Authorities Act and the Building Regulations. The colony is a new one and is in the process of development. What the petitioner has projected in this writ petition is the illegality in the sanctioning of the multi-storeyed building on the basis of an application made by respondents 3 and 4, the owners of the plot. Subsequently, the builder has also filed an application for intervention, which was allowed by us. According to the building plan, it is for the construction of a multi-storeyed building to be named 'Rajshree Apartments'. According to the petitioner, such a multi-storeyed building having a height of more than 11 metres could not be sanctioned unless it faced a road having a width of 7 metres or roughly 23 feet. According to the petitioner, the road adjacent to or in front of the building proposed, has only a width of 15 or 16 feet and in the circumstances, the sanctioning of such a plan was illegal and the construction of the multi-storeyed building was illegal. The petitioner has also stated that another multi-storeyed building in the same road has also been sanctioned and constructed and that construction was also illegal and against the master plan for Ranchi, the Regional Development Authority Act and the Building Regulations. But he has not impleaded the owner of that building, nor has he challenged the sanction of the plan of the building and the prayer is confined to the setting aside of the illegal sanction of the plan for 'Rajshree Apartments' and for a direction to the Ranchi Regional Development Authority not to allow or sanction building plans for construction of multi-storeyed buildings in the colony in view of the nature of the roads available in the colony.

2. Respondents 3 and 4, and the builder, the intervener, have resisted the writ petition contending that this was not a public interest litigation, but was really a private litigation started by the petitioner to cover up his own illegal acts, that notices have been issued to the petitioner and certain others who are his supporters for removal of illegal constructions and the attempt of the petitioner was to stall the action being taken pursuant to those notices. It is submitted that the petitioner was related to and close to leading politicians including a representative of the people and his attempt to challenge the sanctioned plan obtained by respondents No. 3 and 4 was mala fide. It is also pointed out that if the petitioner has been espousing a public cause, he should have objected to the construction of

another multi-storeyed building which had admittedly come into existence by the very same road. It is submitted that the construction was being carried out strictly in accordance with the sanctioned plan and there was no violation or deviation from that plan. In fact, when a drain was constructed, as envisaged by the sanction and the relevant rules leaving out a strip of land, 4 feet wide from the property of respondents 3 and 4, the petitioner and certain others destroyed that drain leading to a proceeding being initiated under the Code of Criminal Procedure and that this conduct of the petitioner should also be taken note of. They have prayed for dismissal of the writ petition. The Town Planner of the Ranchi Regional Development Authority has filed a counter-affidavit on behalf of the Chief Engineer of the Ranchi Regional Development Authority. He has submitted that the plan had been duly sanctioned, but the sanction was with a condition that prior to the construction of the main building, the builder should construct a drain for the proposed building which will be connected to the main drain and the building plan would be issued to them only after the drain work is completed. The plan can be cancelled only if anything was done in violation of the provisions of the Ranchi Regional Development Authority Act, the Building Bye-laws or the sanctioned plan, it is submitted that the action in sanctioning the plan was not mala fide. It was sanctioned only in accordance with the Building Bye-laws and the Authority could not sanction the plan in violation of the bye-laws. It is submitted that on 26.11.2001, the authority had itself issued a notification that any building above 11 metres in height can be built only if the road facing it had width of 25.' But it is contended that the said notification was only prospective and was issued only on 26.11.2001. The building plan in question was sanctioned on 10.11.2001, a few days before that notification. It is submitted that the building plan of Hans Apartment, the other building, said to be in violation, was only as per the provisions of the Act and the building bye-laws. The local residents were preventing the construction of the drain as envisaged. There was no collusion or undue influence brought to bear on the Authorities.

3. Admittedly, the area in question is a residential area as per the master plan implemented in the year 1982. In this area, no road is shown in the master plan. The colony actually came into existence later. It appears that a 16' wide road has been left. There was considerable dispute before us as to what actually was the

Rule that was applicable as on the day the plan was sanctioned on the request of respondents 3 and 4. Ultimately, the learned senior counsel for the Ranchi Regional Development Authority made available to us the Building Bye-Laws, 1981 framed by the Patna Regional Development Authority as revised up to November, 1993. Part IV relating to the bye-laws for the development of land, in clause 33.2.1 provides that the minimum width of a service road shall be 7 metres, if it is only of a length of 300 metres and if it exceeds 300 metres or serves up to 100 flats/houses, it shall be 12 metres wide. Here the road in question appears to be 800 metres long. Note-11 to bye-law 20.1.1 provides that every building, more than 10 meters and upto 15 metres in height, shall face a minimum 6 meters wide existing road. If the plot abuts on the existing road less than 6 metres in width, a building more than 10 meters in height shall not be allowed, but a building upto 10 meters in height shall be permitted on less than 6 meters of existing road, provided that owner of the plot leaves from his plot for road widening purposes, one half of the strip of land required to make the approach road 6 metres wide. Apparently, the other half to be left by the plot owner on the side of the Road. Here, the building proposed is admittedly having a height of 14.50 metres. Therefore, the minimum width of the road required is 6 metres and according to the Rules, in any event, it should not be less than 3.66 metres in which case the owner of the plots will have to leave half of the extent as the strip of land required to make the road 6 metres wide. We find that this later part of the Rule is really not understandable. Even assuming that in the present case, respondents 3 and 4 are prepared to leave out half of the area required for making a road having a width of 6 metres, there is no provision by which the owners of other buildings along the road who have not gone in for construction of a building above 10 metres in height can be compelled to surrender the extent required for making the road a 6 meter wide road through its entire length. Moreover, the owner who does not put up a multi-storeyed building has no obligation to leave out a strip of land towards passive development if one were to go by this note. Therefore, it appears to us that unless a road is having a width of 6 metres throughout its length, the Ranchi Regional Development Authority could not sanction a plan for a multi-storeyed building having a height of above 10 metres and below 15 metres. Though an attempt was made by the learned senior counsel for the Ranchi Regional Development

Authority to support the action of the Authority in sanctioning the plan, we find that nothing has been produced to show that the authority applied its mind to this aspect while sanctioning the plan for the construction of the building in question or this aspect was considered by the authority when it sanctioned the plan for construction of Hans Apartments.

4. It appears to us that the Ranchi Regional Development Authority has not shown an adequate commitment to the development of the city in a planned manner as per the master plan, the Development Authority Act and as per the Building Bye-laws and the Rules. It is the duty of the Ranchi Regional Development Authority to enforce the Rules and Bye-laws strictly and not to favour persons who are seeking to violate the Rules or the sanctioned plans. Unfortunately, in a number of cases, this Court has come to notice that the officers of the Ranchi Regional Development Authority had played into the hands of persons who want to build and have not kept in mind the interests of the city and its planned development. We think that it is necessary for the State Government to take stringent action against those officials of the Ranchi Regional Development Authority who have not shown adequate commitment in enforcing the Ranchi Regional Development Authority Act and the Building Bye-laws and for ensuring that there is no violation from a sanctioned plan while the construction is being made. Unless some exemplary action is taken against those found guilty of dereliction of duty or of deliberate misconduct, the development of the City will be totally stultified leading to grave problems.

5. Coming back to the case on hand, we think that the question whether respondents No. 3 and 4 and the builder, the intervener, are entitled to have a plan sanctioned for the proposed building has to be reconsidered by the Ranchi Regional Development Authority. May be, that the approach of the petitioner to this Court is not absolutely with clean hands, but the fact remains that he is seeking to espouse a cause which is of grave concern to anyone concerned with the planned and proper development of the city and which has arisen in this Court time and again. To that extent, the litigation represents the protection of public interest. Therefore, we are not inclined to accept the contention of respondents 3 and 4 that the approach of the petitioner to this Court is not bonafide and on that

ground, we should dismiss the writ petition.

6. At the same time, if the writ petitioner and some of his supporters have violated the sanctioned plans while constructing buildings or any undertaking given by them while obtaining sanctions for the plan. Regional Development Authority is bound to take action against them and compel them to honour the undertakings and also remove any deviation or violation of the plan sanctioned to them, if such a violation is found. It is indicated in the counter-affidavit of respondents 3 and 4 that notices were issued to such persons, including the writ, petitioner. If it is so, the Ranchi Regional Development Authority will proceed against those who have violated the rules, bye-laws and sanctioned plans and file an affidavit as regards the action taken in that regard within four months from the date of receipt of a copy of this judgment. We think that this direction is necessary in public interest and in the interests of a planned development of the colony. This direction will also apply to Hans Apartments in respect of which also action will be taken by the Ranchi Regional Development Authority after notice to the concerned, if it is found that there is any violation of the Ranchi Regional Development Authority Act, the Building Bye- laws, or the sanctioned plan.

7. We, therefore, allow this writ application to the extent of quashing the plan sanctioned in favour of respondents 3 and 4 and direct the Ranchi Regional Development Authority to re-consider the request of respondents No. 3 and 4 for construction of Rajshree apartment. We also direct the Ranchi Regional Development Authority to take action against all those in the Basant Bihar Colony, who have violated the Ranchi Regional Development Authority Act, bye-laws or their sanctioned plans, including the writ petitioner, (if he is found to have violated the By-laws, sanctioned plan or any undertaking given by him while obtaining the sanction). We also direct the Ranchi Regional Development Authority to scrutinize the approved plan of Hans Apartment and take necessary action after notice to the owner thereof in accordance with law. Until a fresh decision is taken on the question of approval of the building plan submitted by respondents No. 3 and 4 and before getting the plan approved afresh, respondent 3 and 4, and the intervener are restrained by an injunction from carrying on any construction activity in the plot belonging to respondents No. 3 and 4 in which Rajshree Apartment is

proposed to be constructed. The Ranchi Regional Development Authority is also directed to ensure that the Ranchi Regional Development Authority Act the Master plan and the Building Bye-laws are strictly implemented and no plan is sanctioned, unless it strictly complies with the development rules and the master plan of the city. The Ranchi Regional Development Authority is also directed to take action against any of its officers who have colluded with or stood passively by winking at violations of the Building Bye-laws and approved plans. An affidavit regarding the action taken will also be filed in this Court within a period of six months from today.

R.K. Merathia, J.

8. I agree.

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